

**ADDENDUM #5 TO THE**  
**AGREEMENT FOR LEGAL SERVICES**  
**BETWEEN**  
**THE SOUTH DAKOTA**  
**DEPARTMENT OF MILITARY AND VETERANS AFFAIRS**  
**AND**  
**BANKS, JOHNSON, COLBATH, SUMNER & KAPPELMAN**  
**ATTORNEYS & COUNSELORS AT LAW**

THIS Addendum #5 is made and entered into between the parties this seventeenth day of June 2010, by and amends an Agreement for Legal Services between the South Dakota Department of Military and Veterans Affairs ("SD Dept of Mil & Vets") and Banks, Johnson, Colbath, Sumner, & Kappelman, Attorneys & Counselors at Law ("Consultant") entered into January 1, 2004.

The parties hereby agree that the Agreement be amended as follows:

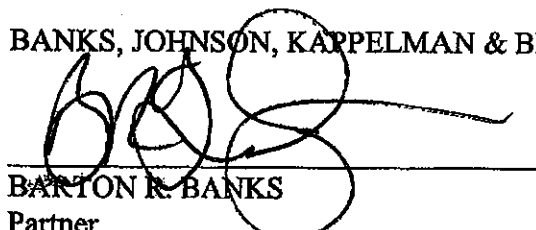
1. That Section VII Term of Agreement be deleted and replaced as follows:

The term of this Agreement shall commence on January 1, 2004 and shall remain in effect through October 31, 2010.


2. Amend the name of the Consultant from BANKS, JOHNSON, COLBATH, SUMNER & KAPPELMAN, Attorneys & Counselors at Law to BANKS, JOHNSON, KAPPELMAN, & BECKER, PLLC.
3. This Addendum is effective as of June 29, 2010.
4. All other terms and conditions of the Agreement and all amendments and addendums thereto shall remain as originally written.
5. Upon execution this Addendum will be attached to the Agreement and made part therein.

In Witness Whereof, the parties signify their agreement by the signatures affixed below.

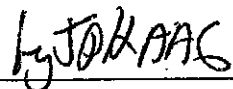
BANKS, JOHNSON, KAPPELMAN & BECKER, PLLC

  
BARTON R. BANKS  
Partner

STATE OF SOUTH DAKOTA  
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

  
STEVEN R. DOOHEN, Maj Gen, SDNG  
The Adjutant General

  
DENNIS D. ROUNDS  
Litigation and Legal Services Manager  
For the Governor

Approved as to Form  
Marty J. Jackley   
MARTY JACKLEY  
Attorney General

**ADDENDUM #5 TO THE**  
**AGREEMENT FOR LEGAL SERVICES**  
**BETWEEN**  
**THE SOUTH DAKOTA**  
**DEPARTMENT OF MILITARY AND VETERANS AFFAIRS**  
**AND**  
**BANKS, JOHNSON, COLBATH, SUMNER & KAPPELMAN**  
**ATTORNEYS & COUNSELORS AT LAW**

THIS Addendum #5 is made and entered into between the parties this seventeenth day of June 2010, by and amends an Agreement for Legal Services between the South Dakota Department of Military and Veterans Affairs ("SD Dept of Mil & Vets") and Banks, Johnson, Colbath, Sumner, & Kappelman, Attorneys & Counselors at Law ("Consultant") entered into January 1, 2004.

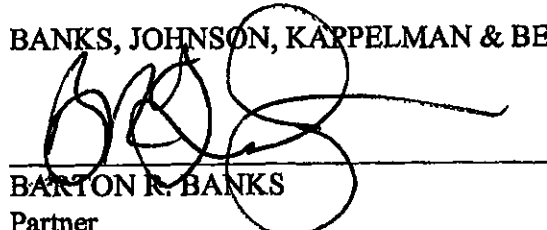
The parties hereby agree that the Agreement be amended as follows:

1. That Section VII Term of Agreement be deleted and replaced as follows:

The term of this Agreement shall commence on January 1, 2004 and shall remain in effect through October 31, 2010.
2. Amend the name of the Consultant from BANKS, JOHNSON, COLBATH, SUMNER & KAPPELMAN, Attorneys & Counselors at Law to BANKS, JOHNSON, KAPPELMAN, & BECKER, PLLC.
3. This Addendum is effective as of June 29, 2010.
4. All other terms and conditions of the Agreement and all amendments and addendums thereto shall remain as originally written.
5. Upon execution this Addendum will be attached to the Agreement and made part therein.

In Witness Whereof, the parties signify their agreement by the signatures affixed below.

BANKS, JOHNSON, KAPPELMAN & BECKER, PLLC

  
BARTON R. BANKS  
Partner

STATE OF SOUTH DAKOTA  
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS



STEVEN R. DOOHEN, Maj Gen, SDNG  
The Adjutant General

DENNIS D. ROUNDS  
Litigation and Legal Services Manager  
For the Governor

MARTY JACKLEY  
Attorney General

*This contract  
is being over  
night shipped-  
will be signed  
early next week.*

**ADDENDUM #3 TO THE**  
**AGREEMENT FOR LEGAL SERVICES**  
**BETWEEN**  
**THE SOUTH DAKOTA**  
**DEPARTMENT OF MILITARY AND VETERANS AFFAIRS**  
**AND**  
**BANKS, JOHNSON, COLBATH, SUMNER & KAPPELAN**  
**ATTORNEYS & COUNSELORS AT LAW**

THIS Addendum #3 is made and entered into between the parties this eighth day of January 2010, by and amends an Agreement for Legal Services between the South Dakota Department of Military and Veterans Affairs and Banks, Johnson, Colbath, Sumner, & Kappelman, Attorneys & Counselors at Law entered into January 1, 2004. The purpose of Addendum #3 is to extend the term of the Agreement through June 30, 2010.

The parties hereby agree that the Agreement be amended as follows:

1. That Section VII Term of Agreement be deleted and replaced as follows:

The term of this Agreement shall commence on January 1, 2004 and shall remain in effect through June 30, 2010.

2. This Addendum is effective as of January 8, 2010.
3. All other terms and conditions of the Agreement and all amendments and addendums thereto shall remain as originally written.
4. Upon execution this Addendum will be attached to the Agreement and made part therein.


In Witness Whereof, the parties signify their agreement by the signatures affixed below.

BANKS, JOHNSON, COLBATH, SUMNER & KAPPELMAN, Attorneys & Counselors at Law

  
BARTON R. BANKS  
Partner

STATE OF SOUTH DAKOTA  
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

  
STEVEN R. DOOHEN, Maj Gen, SDNG  
The Adjutant General

  
DENNIS D. ROUNDS  
Litigation and Legal Services Manager  
For the ~~Approved~~ as to Form  
Marty J. Jackley *65 JPB AAC*

MARTY JACKLEY  
Attorney General

# **COPY**

**AGREEMENT FOR LEGAL SERVICES  
BETWEEN THE Department of Military  
and Veteran's Affairs,  
STATE OF SOUTH DAKOTA, AND  
Banks Johnson Colbath Sumner &  
Kappelman Attorneys &  
Counselors at Law**

The South Dakota Department of Military and Veteran's Affairs, hereinafter "SD Dept of Mil & Vets" and Banks Johnson Colbath Sumner & Kappelman Attorneys & Counselors at Law, hereinafter "Banks Johnson Law Firm"; hereby agree that SD Dept of Mil & Vets will receive legal advice and representation as provided in this Agreement.

**Section I. Scope of Work:**

Banks Johnson Law Firm agrees to provide legal services and represent SD Dept of Mil & Vets as needed. Legal services are required as related to South Dakota Army National Guard project named AASF Addition, SDARNG, Rapid City, SD, project number FRC9700159F.

**Section II. Payment Provisions:**

It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, SD Dept of Mil & Vets shall pay Banks Johnson Law Firm, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed one hundred fifty dollars. (\$150.00). The total amount expended under this contract shall not exceed (\$20,000.00).

Expenses for travel, meals and lodging incurred by Banks Johnson Law Firm on behalf of SD Dept of Mil & Vets shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

**Section III. Independent Contractor:**

While performing the services hereunder, Banks Johnson Law Firm is acting as an independent contractor and not as an officer, agent or employee of SD Dept of Mil & Vets or of the State of South Dakota.

**Section IV. Hold Harmless and Indemnification:**

Banks Johnson Law Firm agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require Banks Johnson Law Firm to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of Banks Johnson Law Firm, unless such errors or omissions resulted from the acts or omissions Banks Johnson Law Firm. Nothing in this agreement is intended to impair the insurance coverage of Banks Johnson Law Firm or any subrogation rights of Banks Johnson Law Firm insurers.

**Section V. Insurance:**

Banks Johnson Law Firm hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide SD Dept of Mil & Vets with evidence thereof upon request.

**Section VI. Limitations Upon Legal Representation:**

It is agreed and acknowledged by Banks Johnson Law Firm that in order for Banks Johnson Law Firm to represent the State of South Dakota or the interests of SD Dept of Mil & Vets in any court of law, he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

**Section VII. Term of the Agreement:**

The term of this Agreement shall commence on January 1, 2004, and shall remain in effect through December 31, 2005.

**Section VIII. Termination:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

**Section IX. Default Provision:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

**Section X. Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

**Section XI. Agreement Not Assignable:**

This Agreement is not assignable by Banks Johnson Law Firm either in whole or in part, without the written consent of SD Dept of Mil & Vets.

**Section XII Payments Include All Taxes:**

Payments made to Banks Johnson Law Firm as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against Banks Johnson Law Firm by reason of this Agreement.

**Section XIII South Dakota Law Controlling:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

**Section XIV Conflict of Interest:**

Banks Johnson Law Firm agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the




State of South Dakota or any of its departments, bureaus,  
boards or commissions consistent with the policy attached  
hereto and labeled Exhibit A.

FOR SD Dept of Mil & Vets:

Banks Johnson Law Firm:

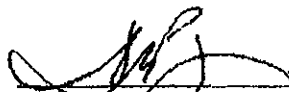
  
(Name), (State Agency Head)

  
(Name)

Dated: 22 Jan 04


Dated: January 30, 2004

The foregoing Agreement is hereby approved.

  
Judith M. Payne  
Litigation and Legal Services Manager  
For the Governor

Dated: 20 Feb 04

The foregoing Agreement is hereby approved as to form.

Approved as to Form  
Larry Long  AAG  
Larry Long  
Attorney General

Dated: 2/25/04

## POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the

contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.
2. Any condemnation action in which the contracting attorney represents a condemnee.
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.
10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.
11. Any lobbying activity by the contracting attorney
12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be

in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.